IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2007

CORAM:

THE HON'BLE MR. JUSTICE M.JAICHANDREN

W.P.No.16816 of 2006 (T)
in
OA.No.1976/96

S.Chellappa ... Petitioner

Vs.

1. The Govt. of Tamil Nadu,
   rep. by the Secretary to the Government,
   Finance (Pay Cell) Department,
   Fort St. George, Madras-600 009.

2. The Deputy Director of Health Services,
   Tirunelveli,
   Tirunelveli-Kattabommon District. ... Respondents

This writ petition came to be numbered by way of transfer of O.A.No.1976 of 1996 from the file of Tamil Nadu Administrative Tribunal with a prayer to issue a Writ of Ceriorarified Mandamus to call for the records relating to the impugned order of the second respondent in R.No.9666/A3/94 dated 23.2.96 and quash the same in so far as the applicant is concerned and direct the second respondent to restore the pay of the applicant in the Scale of Rs.1600-2660 which he was drawing prior to the issue of the impugned order.

For Petitioner - Mr.P.Rajendran

For Respondents - M.K.T.Gopu,G.A.

WEB COPY

O R D E R

It is submitted by the petitioner that he has been working as Health Supervisor at the Primary Health Centre, Kogiluthu, Tirunelveli Kattabomman District. He was initially appointed as a Vaccinator under the National Small Pox Eradication Program, on 16.11.1963. The post of Vaccinator was re-designated as Multi Purpose Health Assistant in the year 1988 and the petitioner was posted as Multi Purpose Health Assistant by an order of the

https://hcservices.ecourts.gov.in/hcservices/

District Health Officer, Tirunelveli in R.No.16453/A8/88, dated 28.11.1988. The petitioner was also awarded Special Grade in the said post. He was promoted as Health Supervisor on 28.1.1989. At the time of promotion as Health Supervisor, the petitioner was a Special Grade Multi Purpose Health Assistant. The Pre-Revised Ordinary Grade Scale of Health Supervisor was Rs.610-1075 and the Pre-Revised Special Grade Scale of Multi Purpose Health Assistant was Rs.905-1545. Since the Ordinary Grade Scale of the Promotion Post was lesser than the Special Grade Scale of the lower post, which the petitioner was holding, his pay was fixed in the Selection Grade Scale of Health Supervisor, namely, Rs.905-1545, by orders of the Deputy Director of Health Services, Tirunelveli in R.No.9666/A3/94/1, dated 21.12.1994. The said order was issued in pursuance of the orders issued in the Government Letter No.26846/PC/94-J Finance (PC) Department, dated 20.6.1994. The Revised Scale of Pay for the Pre-Revised Scale of Rs.905-1545 in Rs.1600-2660. Accordingly, the applicant's pay was fixed in the Revised Scale of Rs.1600-2660, with effect from 28.1.1989, by an order of the Deputy Director of Health Services, Tirunelveli, in R.No.9666/A3/94-2, dated 21.12.1994. The petitioner was paid the arrears of pay. He has been drawing pay in the Scale of Rs.1600-2660, with effect from 28.1.89. While so, the second respondent has now issued an order in R.No.9666/A3/94, dated 23.2.1996, (the impugned order) cancelling the above said pay fixation and refixing the pay in the lower scale of Rs.1320-2040 and directed the Medical Officers concerned to recover the excess payment of Pay Fixation Arrears and remit the same into the Treasury. Hence, the petitioner has challenged the impugned order, dated 23.2.1996.

2. Heard the learned counsel for the petitioner as well as for the respondents.

3. At the stage of the hearing of the writ petition, the learned counsel for the petitioner has placed before this Court an order, dated 21.11.2006, made in W.P.No.27672 & 27673 of 2006, in which the said impugned order R.No.9666/A3/94, dated 23.02.96, had been quashed.

4. The learned counsel appearing for the respondents has not denied the claims made by the petitioner.

WEB COPY

5. The order passed by this Court, on 21.11.2006, is as follows:-

> "The petitioners have challenged an order dated 23.2.1996, by which their pay in the post of Health Supervisor was revised with effect from 29.1.1989 and 13.1.1989 respectively and consequential recovery ordered of the excess payment already made.

https://hcservices.ecourts.gov.in/hcservices/

2.It is seen from the impugned order dated 23.2.1996 that the second respondent did not give any opportunity to the petitioners before passing the impugned order. The impugned order is one by which the pay of the petitioners was sought to be downgraded and recovery effected. It is well settled that such an order cannot be passed without issuing a notice and without affording an opportunity of hearing to the petitioners. Therefore on this short ground, the impugned order is set aside and the matter is remitted back to the second respondent for a fresh disposal in accordance with law to be made after following the due process of law by giving a notice to the petitioners, receive an explanation from them and then pass orders within a period of three months from the date of receipt or production of a copy of this order.

3. Accordingly, the writ petition is allowed and the impugned order is set aside with the above directions. No costs."

6. In view of the order passed by this Court, on 21.11.2006, in W.P.Nos.27672 & 27673 of 2006, the impugned order of the second respondent, R.No.9666/A3/94, dated 23.2.1996, is set aside and the matter is remitted back to the second respondent for a fresh disposal by passing appropriate orders on merits and in accordance with law, after giving sufficient opportunity to the petitioner by receiving an explanation from him within a period of three months from the date of receipt of a copy of this order.

7. With the above directions, the writ petition is disposed of. No costs.

akv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To

1. The Secretary to the Government,
   The Govt. of Tamil Nadu,
   Finance (Pay Cell) Department,
   Fort St. George, Madras-600 009.

2. The Deputy Director of Health Services,
   Tirunelveli,
   Tirunelveli-Kattabommon District.

+ 1 cc to the Government Pleader, SR No.25032

+ 1 cc to Mr. P. Rajendran, Advocate SR No. 52052

W.P.No.16816 of 2006

GG(CO)
SR/21.9.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/